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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TAEVION KNOX,

Defendant and Appellant.

C085362

(Super. Ct. No. 15F03966)

Following a jury trial, defendant Taevion Knox was found guilty of two counts of assault with a firearm and a single count of unlawfully carrying a loaded firearm, along with enhancements for using a firearm (Pen. Code,¹ § 12022.5, subds. (a) & (d)) on both

¹ Further undesignated references are to the Penal Code.

assault counts.² The trial court sentenced defendant to 19 years in state prison for one of the assault counts, with a concurrent 19-year term on the other assault count and a concurrent two-year term on the firearm possession count.

On appeal, defendant contends the matter should be remanded to allow the trial court to determine whether to exercise its discretion to strike any of the firearm enhancements. The People correctly concede the point.³

On October 11, 2017, the Governor signed Senate Bill No. 620 (Stats. 2017, ch. 682, § 2, eff. Jan. 1, 2018). As relevant here, Senate Bill No. 620 provides that, effective January 1, 2018, section 12022.5 is amended to permit the trial court to strike an enhancement for personally using a firearm. (§ 12022.5, subd. (c).) The new provision states as follows: “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” (Stats. 2017, ch. 682, § 1.) Prior to this amendment, an enhancement under section 12022.5 was mandatory and could not be stricken in the interests of justice. (See former § 12022.5, subd. (c); Stats. 2011, ch. 39.)

The amendment to section 12022.5 applies retroactively to cases not final on appeal. (*People v. Arredondo* (2018) 21 Cal.App.5th 493, 507; *People v. Woods* (2018)

² We dispense with the facts of defendant’s crimes as they are unnecessary to resolve this appeal. The few relevant procedural facts are incorporated into this opinion without a separate subsection.

³ The parties mistakenly argue that section 12022.53 enhancements were imposed and the matter should be remanded to allow the trial court to exercise its discretion whether to strike these enhancements. The jury sustained only section 12022.5 enhancements, and these were the only enhancements imposed by the trial court at sentencing. This mistake does not change our analysis.

19 Cal.App.5th 1080, 1090-1091.) When a trial court is unaware of sentencing discretion, the appropriate remedy is to remand for the court to exercise its discretion. (*People v. Brown* (2007) 147 Cal.App.4th 1213, 1228.)

We shall remand the matter to allow the trial court to determine whether to exercise its discretion to strike any of the section 12022.5 enhancements.

DISPOSITION

The judgment is affirmed. The matter is remanded for the limited purpose of permitting the trial court to exercise its discretion regarding whether to strike any of the section 12022.5 firearm enhancements.

_____,
Robie, Acting P. J.

We concur:

Hoch, J.

Krause, J.